

Securities and Exchange Commission

§ 250.51

U.S.C. 79f) with respect to the issuance or sale of any securities to the vendor of supplies or equipment for use in the business of such subsidiary company, and from the provisions of any rule under section 12(c) of the Act with respect to the acquisition, redemption or retirement of any such securities.

(c) *Transactions approved by a reorganization court.* Any such subsidiary company which is the subject of a proceeding for reorganization in any court of the United States in which proceeding the Commission has filed a notice of appearance pursuant to section 1109(a) of chapter 11 of the Bankruptcy Code (11 U.S.C. 1109(a)) or which is a subsidiary within the meaning of section 2(a)(8) of the Public Utility Holding Company Act (49 Stat. 804; 15 U.S.C. 79b), of any such subsidiary company which is the subject of such a proceeding, shall be exempt from any provision of the act applicable to the appointment of any trustee for such company or to any transaction entered into with the approval (direct or indirect) of such court: *Provided*, That such transaction does not involve the acquisition of any utility assets or securities of any public utility or holding company; *Provided further*, That this paragraph shall be inapplicable to any subsidiary company which is the subject of reorganization proceedings (or any subsidiary of such subsidiary company within the meaning of section 2(a)(8) of the Public Utility Holding Company Act), where such subsidiary company, or any subsidiary thereof, is the issuer of any securities, or is the obligor on any obligations, which have been guaranteed or assumed by any registered holding company.

(d) *Exemption from section 9(a).* (1) Any such subsidiary company primarily engaged in the production of natural gas or crude oil or sulphur, or in two or more of such businesses, shall be exempt from section 9(a) of the Act (49 Stat. 817; 15 U.S.C. 79i) with respect to the acquisition, from a person other than an associate or an affiliate of the acquiring company or an affiliate of an associate company, of gas leases, oil leases, or other production leases, in connection with the business in which such subsidiary is so engaged: *Provided*,

however, That the exemption provided by this paragraph shall not be applicable if such acquisition is part of a transaction which involves the filing of an application or declaration with the Commission by such subsidiary company.

(2) Any such subsidiary company which is subject to regulation as a water, telephone, common carrier or other public service company, under the laws of the State in which it operates, shall be exempt from section 9(a) of the Act with respect to any acquisition expressly authorized by the State commission of such State provided that such acquisition does not include utility assets, securities of a public utility or holding company, or any other interest in any class of business other than that in which such public service company is engaged.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 12 FR 1649, Mar. 11, 1947; 59 FR 21928, Apr. 28, 1994]

§ 250.50 [Reserved]

§ 250.51 Acquisitions pursuant to preliminary agreements and invitation for tenders.

For the purpose of section 9(a) of the Act, the term "acquire" is defined to include the making of a contract or agreement (herein called Preliminary Agreement) pursuant to which a person subject to section 9(a) (of the Act) (herein called the Proposed Acquirer) contingently or otherwise acquires any right or becomes subject to any obligation to acquire directly or indirectly any securities or utility assets or any other interest in any business, or to direct any other person to make any sale or acquisition of any securities or utility assets or any other interest in any business. Except where an exemption from section 9(a) (of the Act) may be applicable, the making of such Preliminary Agreement or the taking of any action in connection therewith, without prior approval of the Commission, by any person so subject to section 9(a) (of the Act) shall be deemed unlawful, unless all of the following conditions are satisfied:

(a) The transaction contemplated by the Preliminary Agreement is expressly conditioned on Commission approval and the application for such approval is filed with the Commission as soon as practicable.

(b) No standby, option, or similar fee is paid or payable by or on behalf of the Proposed Acquirer as consideration for the Preliminary Agreement.

(c) The Proposed Acquirer does not indemnify or agree to indemnify any person against any market or investment risk in connection with such person's acquisition, retention or disposition of the subject matter of the proposed acquisition.

(d) The Proposed Acquirer does not transfer to any person (other than a subsidiary or successor in interest by merger or consolidation), by way of assignment or otherwise, any of its rights or interests in respect of the subject matter of the proposed acquisition unless such transfer is conditioned upon consummation of the Preliminary Agreement following its approval by the Commission.

(e) In case a proposed transaction includes an acquisition of securities pursuant to an invitation for tenders to be made prior to the approval of such acquisition, provision shall be made that any person tendering such securities (the Tenderer) may demand in writing the return of any deposited securities at any time after 60 days from the initial mailing or publication of the invitation for tenders unless prior to the receipt of such demand either (1) the proposed acquisition has been approved by the Commission and the Proposed Acquirer is obligated to consummate the transaction or (2) the Tenderer has been issued a transferable certificate of deposit which meets the conditions specified in paragraph (f) of this section.

(f) A transferable certificate of deposit for purposes of paragraph (e) of this section may be issued in exchange for tendered securities subject to the following conditions:

(1) The terms of the certificate of deposit as proposed to be issued are specified in the invitations for tenders, including equitable provisions for return of the tendered securities in the event the proposed transaction is not ap-

proved by the Commission or otherwise fails of consummation, for exercise of voting rights and for receipt of dividends or interest by the Tenderer during the deposit period.

(2) The Proposed Acquirer files with the Commission an application-declaration proposing the issuance of such certificates of deposit in exchange for tendered securities.

(3) Upon notice and after a hearing which shall be limited to the fairness of the terms and conditions of such issuance and exchange and to compliance with the conditions of this Rule, the Commission in its discretion may by order permit such issuance and exchange on such terms and conditions as it shall approve. Any person to whom it is proposed to issue a certificate of deposit shall be entitled to appear at such hearing.

(4) If the terms and conditions specified in the certificates of deposit to be issued pursuant to order of the Commission differ from those specified in the invitation for tenders previously published by the Proposed Acquirer, the Commission may in such order require the Proposed Acquirer to give notice thereof by mail (and publication if deemed appropriate) to all persons who have tendered their securities and to provide up to 20 days after mailing of such notice for any such person to elect, in a manner prescribed by the Commission, either to continue to or revoke his tender. The terms and conditions specified in the certificates of deposit may be modified only pursuant to order of the Commission.

[33 FR 9287, June 25, 1968]

§ 250.52 Exemption of issue and sale of certain securities.

(a) Any registered holding-company subsidiary which is itself a public-utility company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any security, of which it is the issuer if:

(1) The issue and sale of the security are solely for the purpose of financing the business of the public-utility subsidiary company;

(2) The issue and sale of the security have been expressly authorized by the state commission of the state in which